



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

July 25, 1990

Mr. Jerry E. Drake, Jr.
Assistant City Attorney
City of Denton, Texas
Municipal Building
Denton, Texas 76201

OR90-319

Dear Mr. Drake:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 8881.

You have received a request for all of the employment records of a Denton police officer. You have raised several exceptions to the required public disclosure of this information based on the Open Records Act. You have submitted for our review copies of the entire personnel file of the officer maintained by the city's personnel department and the entire personnel file maintained by the police department.

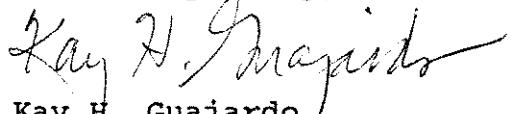
You raise section 3(a)(3), the litigation exception, to the disclosure of this information. Your letter of May 11, 1990, indicates that there is litigation currently pending in district court which concerns an incident in which the officer whose records are requested was involved. In order for the litigation exception to apply, litigation must be pending or reasonably anticipated and the information must relate to the litigation. See Open Records Decision No. 551 (1990). We conclude that the information in the personnel files of both the city and the police department relates to the litigation that is now pending. Consequently, you may withhold the copies of the files based on section 3(a)(3) of the Open Records Act. See Open Records Decision No. 418 (1984).

We assume, however, that none of the information in the records at issue has previously been made available to the opposing party in the litigation. Absent special circumstances, once information has been obtained by all parties to the litigation, no section 3(a)(3) interest

exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing party has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 3(a)(3).

Having settled your request pursuant to section 3(a)(3) of the Open Records Act, we need not address the application, if any, of the other exceptions you raise. Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-319.

Yours very truly,


Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/le

Ref.: ID# 8881, 9647

Enclosure: Open Records Decision No. 418

cc: Mr. Peter Martin
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Denton, Texas 76205